IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11992 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BAPUBHA VIJUBHA GOHIL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11992 of 2003
MR SHAKTISINH GOHIL for Petitioner No. 1
MR SIRAJ GORI AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 12/02/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this petition under Article 226 of the Constitution, the petitioner has challenged the order

dated 9.7.2003 (Annexure "A" to the petition) passed by the Regional Transport Officer, Bhavnagar communicating the decision of the Transport Commissioner, Ahmedabad rejecting the petitioner's NT Forms for non-use of Bus No.GJ-3T-9803 for the period from 1.7.1995 to 31.3.1996 and for anther period from 1.1.1997 to 28.2.1997. By the said order, the RTO has also passed consequential order levying motor vehicle tax of Rs.72,144/- with penalty and interest.

2. Since the learned counsel for the petitioner had at the last hearing stated that the petitioner is not served with the order of the Transport Commissioner, the hearing was adjourned to enable Mr Gori, learned AGP to place on record a copy of the said order of the Transport Commissioner.

Accordingly, today Mr Gori has placed on record a copy of the order dated 23.4.2003 of the Joint Transport Commissioner rejecting the petitioner's NT Forms for non-use regarding Bus No.GJ-3T-9803 during the aforesaid period at Annexure "A/1".

Mr Gohil for the petitioner accordingly seeks leave to amend the petition to challenge the said order dated 23.4.2003 at Annexure "A/1" also.
Leave as prayed for is granted.

3. Mr Gohil, learned counsel for the petitioner has submitted that the impugned order of the Joint Transport Commissioner, inter-alia, mentions that the Transport Commissioner can sanction non-use beyond three months only if such non-use is for reasons beyond the control of the owner of the vehicle but such reasoning is contrary to the decision of the Apex Court in State of Gujarat vs. Kaushikbhai K Patel, 2000 (5) SCC 615. It is further stated that the petitioner had given the grounds that there was no business in the market and that the vehicle had gone for repairs. The Joint Transport Commissioner has stated in the order that no documentary evidence is produced but there cannot be any documentary evidence for recession in the market. As far as repairing is concerned, the petitioner ought to have been given an opportunity to produce documentary evidence if at all the authority had any doubt about such ground for non-use, though it is not open to the authority to make any inquiry where such ground was beyond the control of the owner of the vehicle.

4. On the other hand, Mr Siraj Gori, learned AGP ha submitted that the impugned order dated 23.4.2003 is a

printed order and, therefore, the grounds given for rejection of the NT Forms may be read in light of the handwritten reasons indicated in the order.

5. Having heard the learned counsel for the parties, we would like to point out that the Supreme Court while considering the provisions of Section 3-A(5)(b) and (a), as substituted in 1992, Section 3(2) and Form NT of the Bombay Motor Vehicles Act, 1952 as applicable to Gujarat, held that the tax imposed on a vehicle under the Act is compensatory in nature. It was held that, what is material and relevant is the use of roads by vehicles for levy of tax under the Act. The reason for non-use of roads is immaterial and irrelevant when the nature of tax itself is compensatory for use of roads. It was held that it follows from Section 3(2) of the Act that, where a motor vehicle is not using the roads, no tax is levied thereon.

6. In the above view of the matter, the impugned order dated 23.4.2003 at Annexure "A/1" issued by the Joint Director of Transport, Gujarat State, Ahmedabad and the consequential intimation dated 9.7.2003 at Annexure "A" to the petition are accordingly quashed and set aside. Respondent No.2 is directed to reconsider the NT Forms submitted by the petitioner for the period from 1.7.1995 to 31.3.1996 and for the period from 1.1.1997 to 28.2.1997 by deciding the question whether the vehicle in question was actually used on roads or not during the relevant period/s without going into the justification for reasons for such non-user and decide the same, in light of the decision of the Supreme Court and the law, expeditiously, and, until that is done, the impugned notices/orders at Annexure "A" will not be executed.

While considering the petitioner's NT Forms for non-use of the above numbered vehicle if the Transport Commissioner requires any clarification or details, it will be open to the authority to issue a notice to the petitioner giving the petitioner reasonable opportunity to give such clarification and to produce any material in support of the petitioner's case.

The respondent-Transport Commissioner shall take a fresh decision after giving the petitioner an opportunity of hearing as indicated above and such decision shall be taken within two months from the date of receipt of this order. In case the decision of the authority is adverse to the petitioner, the same shall not be implemented for a period of 15 days from the date of despatch of the decision by RPAD to the petitioner at

his address mentioned in the cause title of this petition that is Bapubha Vijubha Gohil, C/o. Ranjitsinh Gohil at Bharoli, Taluka - Talaja, District Bhavnagar.

8. The petition is accordingly disposed of in terms of the aforesaid directions.
Rule is made absolute to the aforesaid extent.

(M.S. SHAH, J.)

(A.M.KAPADIA, J.)
zgs/-